

## ASSESSMENT BY THE COMMONWEALTH AND IMMIGRATION OMBUDSMAN FOR TABLING IN PARLIAMENT

*Under s 486O of the Migration Act 1958*

This is the fifth s 486O assessment on Mr X who has remained in restricted immigration detention for a cumulative period of more than 78 months (six and a half years). The previous assessments are:

1108/12 tabled in Parliament on 13 November 2013

1001232 tabled in Parliament on 25 June 2014

1001905 tabled in Parliament on 13 May 2015

1002396 tabled in Parliament on 31 August 2016.

This assessment provides an update and should be read in conjunction with the previous assessments.

<b>Name</b>	Mr X
<b>Citizenship</b>	Country A
<b>Year of birth</b>	1972
<b>Ombudsman ID</b>	1000633-O
<b>Date of DIBP's reviews</b>	19 May 2016, 21 November 2016 <sup>1</sup> and 27 March 2017
<b>Total days in detention</b>	2,374 (at date of DIBP's latest review)

### Recent detention history

Since the Ombudsman's previous assessment (1002396), Mr X remained at Facility B.	
29 December 2016	Transferred to Facility C.

### Recent visa applications/case progression

19 May 2016	The Department of Immigration and Border Protection (the department) advised that Mr X was on a removal pathway and that it had submitted an application for an emergency travel document to the Embassy of Country A on behalf of Mr X.
13 September 2016	The authorities in Country A advised the department there was no timeframe for issue of a travel document. On 21 November 2016 the department stated that Mr X's removal was being processed as involuntary.
1 February 2017	Mr X filed an application with the Administrative Appeals Tribunal (AAT) seeking reinstatement of his application for merits review of the department's decision to refuse his Temporary Protection visa (TPV) decision. On 27 March 2017 the department advised that this matter was yet to be heard.

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<sup>1</sup> The department did not meet its statutory obligations in relation to Mr X's 66 and 72 month reviews (dated 19 May 2016 and 21 November 2016 respectively) which were both provided late. Further, Mr X's days in detention were incorrectly recorded in his 66 month review, which did not accurately state his cumulative number of days in detention. The department did not provide any explanation for the lateness of these reviews.

27 March 2017	The department advised that Mr X currently holds a Country A passport.
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**Health and welfare**

International Health and Medical Services (IHMS) advised that in January 2016 Mr X presented to an IMHS general practitioner (GP) with difficulty in coping and low mood as a result of his prolonged detention. The GP prescribed him with antidepressant medication and recommended ongoing monitoring.

At a further mental health review on 5 February 2016 it was reported that his mood continued to deteriorate. He subsequently requested support from the mental health team (MHT) due to his low mood, insomnia, anxiety, isolating and withdrawing behaviours and feeling of hopelessness. He was referred for a psychological review and help with coping strategies.

In July 2016 a psychiatrist noted that Mr X’s depression was worsening and diagnosed him with major depressive disorder with insomnia, hopelessness and anxiety in the context of long-term detention fatigue. His medication was increased and he had increased contact with the MHT for ongoing monitoring and support. He was also referred for individual counselling.

IHMS further advised that Mr X received treatment for a range of physical health concerns including condition D which was diagnosed as stress and fatigue related, bilateral knee osteoarthritis, a heel spur, chronic back pain and high cholesterol.

**Information provided by Mr X**

During an interview with Ombudsman staff at Facility C on 23 May 2017 Mr X stated that the department held a Country A travel document for him which he had arranged himself.

He wanted to leave Australia as he had been in detention nearly seven years. However, he wanted to be sure he would not be sent back to Country E. He said it would be very dangerous for him and he had not been there for over 20 years. He also cited a factor which he believed would prevent his return to Country A. He felt as if he was in limbo and this really impacted on his mental health.

He compared being at Facility C to being in prison. Everything was strict and those who complained risked being sent to Christmas Island Immigration Detention Centre. There were welfare checks at 11.30 am and 4.30 am. The 4.30 am check would wake him up if he was asleep as the detainees’ rooms would shake when the doors were opened and closed. He wanted peace and quiet due to his mental health issues. He considered that he needed a single room as he was sensitive to noise but this was not supported by IHMS.

### **Ombudsman assessment/recommendation**

Mr X was most recently detained on 23 November 2010 after arriving in Australia by sea and has been held in restricted detention for more than six and a half years.

On 1 February 2017 Mr X lodged an application with the AAT seeking reinstatement of a withdrawn application for merits review of the decision to refuse his TPV application. This matter had yet to be determined at the date of the department's latest review.

The department has advised that it is continuing to progress Mr X's involuntary removal to Country A.

The Ombudsman notes that IHMS recorded a significant deterioration in Mr X's mental health in early 2016 and in July 2016 a psychiatrist diagnosed a worsening of his depression to a major depressive disorder in the context of long term detention fatigue.

Given the length of time Mr X has been in restricted detention and the impact on his mental health, the Ombudsman recommends that he be considered for alternative placement arrangements, unless the department is confident that removal to Country A will take place in the near future.